P.R. No. 1825/06 J.K. Gupta
Presented by Shri
dated 28/06/06

(03)
d/100/-
(1)

BEFORE THE HON'BLE HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench

Second Appeal No. 301 Of 2006.

APPELLANT :- Smt. Ishwari Dewangan, wife of Late Om
DEFENDANT Prakash Dewangan, resident of House No. 99, Sikshak Nagar, Durg (Chhattisgarh).

V E R S U S

RESPONDENT :- Smt. Sushila Bai, wife of Late Nohar Singh
PLAINTIFF Dewangan, aged about 65 years, resident of L.I.G. 75, Rajendra Prasad Nagar, Behind Niharika Talkies, Korba, District Korba (C.G.).

APPEAL UNDER SECTION 100 OF CODE OF CIVIL PROCEDURE

(Claim in appeal valued at Rs. 1000/- and c.f paid at Rs. 100/- only)

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(29)

मामला क्रमांक ...S.A...301..... **सन्** 2006

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	25.09.2006 Shri Pankaj Agrawal, learned counsel for the appellant/defendant. Heard on admission. The appellant/defendant has preferred this second appeal u/s 100 of the Code of Civil Procedure against the impugned judgment and decree dated 4.5.2006 passed in Civil Appeal No. 2-A/05 by 11th Additional District Judge (FTC), Durg, Distt-Durg (C.G.) whereby the appeal preferred by the appellant/defendant against the judgment and decree dated 5.12.2002 passed by First Civil Judge, Class-II, Durg in Civil Suit No. 51-A/01, has been dismissed. This appeal has been preferred by the appellant/defendant on the following substantial questions of law; A. "Whether the finding of the self acquired property is against the evidence available on record because it has come in evidence that it was purchased from the death benefits amount of father in law, as clear from para 11 of the statement of plaintiff/respondent herself?"	

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

B. "Whether the finding as to self acquired or joint property can be determined by seeing the source of nucleus only and since the respondent has failed to prove that she has income to purchase the property alone, it cannot be said that undivided son cannot get property of father, as admitted in para 11 of the statement of plaintiff/respondent herself?"

C. "Whether the findings of the courts below are perverse and illegal?"

The plaintiff/respondent filed a suit for declaration of title and mandatory injunction with the averment that the suit house situated in Shikshaknagar, Durg is her self acquired property, the defendant/appellant is her daughter-in-law who is in possession of the suit property and she has no right to induct any person as a tenant in the suit premises and the plaintiff is entitled to recover the rent of Rs. 1,000/- per month which is being recovered by the defendant from the tenant.

The defendant denied the averments of the plaint and stated that the suit house as also the plots situated at Danganiya, Raipur, Girdhari Nagar, Durg were not purchased from the income of the plaintiff and Sheshnarayan whereas the house purchased in the name of

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Sheshnarayan was purchased from the income of defendant and as such the defendant is entitled for 1/3rd share each in the above properties and the same are properties belonging to the joint family.

On the basis of pleadings of the respective parties, the trial Court decreed the suit by recording a finding that the suit house situated at Shikshaknagar, Durg is the self acquired property of the plaintiff, the land situated at village Amlideeh is the property of joint family and the defendant is entitled for 1/3rd share over the said property, the plaintiff and the defendant in their respective claim and counterclaim have partly joined the necessary parties since the counterclaim preferred by the defendant pertains to the property belonging to Sheshnarayan, he has not been arrayed as a party in the suit. Accordingly, the suit and the counterclaim was partly decreed by the trial Court in the following terms;

"It is declared that the house situated at Shikshaknagar, Durg, is the self acquired property of the plaintiff and only she is entitled to let out the same to any person or to get the same vacated. The defendant and her children are entitled for 1/3rd share over the agricultural land situated at village – Bhatagaon, Amlideeh Patan. The defendant and her children are also entitled to get 1/3rd share of the sale proceeds obtained from the

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -4-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

sale of the house situated at village Bhatagaon, Amlideeh Patan. The parties to bear their own costs of the suit.

The appeal preferred by the appellant/defendant has been further dismissed by the learned lower appellate Court with identical finding.

Learned counsel for the appellant submits that the Courts below have wrongly arrived at the conclusion that the property in question was self acquired property of the plaintiff and this finding is against the admission of the plaintiff herself made in paragraph 11 of her statement on oath. It is further argued that the plaintiff has failed to prove that she has adequate income to purchase the property alone and therefore, in view of her admission the Courts below were not justified in decreeing her suit with respect to the property situated at Shikshaknagar, Durg and for these reasons the findings of both the Courts below are perverse and illegal. Thus, the above proposed substantial questions of law arise for adjudication of this appeal.

I have heard learned counsel for the appellant/defendant and have perused the material available on record including the impugned judgments of the Courts below.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

The Courts below after marshaling the evidence in detail adduced by the respective parties have arrived at the conclusion that the property in question was purchased by the plaintiff under hire purchase agreement and she deposited the installments against the purchase and accordingly, the property in question was the self acquired property of the plaintiff. The reference of paragraph 11 of the plaintiff's statement on oath is of no help to the appellant/defendant as after perusing the same it is found that there is no such admission as has been urged in the memo of appeal as also in the argument advanced by counsel for the appellant/defendant.

Therefore, I am of the considered opinion that both the Courts below by proper appreciation of the oral and documentary evidence have arrived at a concurrent finding of fact that the property being residential house is the self acquired property of the plaintiff and no substantial question of law as proposed above by counsel for the appellant/defendant is involved for adjudication of this appeal.

In the result, the appeal being devoid of substance deserves to be dismissed at the admission stage itself and it is accordingly dismissed.

Sd/-
Dhirendra Mishra
Judge

P.T.O.

4.10.06